

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

CORNICIONE DEVELOPMENT, LLC,

Plaintiff,

Case No.

v.

SUNDANCE VACATIONS N.A., INC. f/k/a
SUNQUEST VACATIONS, INC.

Defendant.

COMPLAINT

Plaintiff Cornicione Development, LLC (“Cornicione”), by its attorneys, Godfrey & Kahn, S.C., for its complaint against Sundance Vacations N.A., Inc. f/k/a Sunquest Vacations, Inc. (“Sundance”) hereby alleges as follows:

PARTIES

1. Plaintiff Cornicione is a Wisconsin limited liability company with its principal place of business located at 10700 West Research Drive, Suite One, Milwaukee, Wisconsin 53226. All of the members of Cornicione Development, LLC are residents of Wisconsin.

2. Upon information and belief, Defendant Sundance is a Pennsylvania corporation with its principal place of business located at 264 Highland Park Boulevard, Wilkes-Barre, Pennsylvania 18702 and whose registered agent is CT Corporation System, 8040 Excelsior Drive, Suite 200, Madison, Wisconsin 53717. Sundance was formerly known as Sunquest Vacations, Inc. (“Sunquest”) and is a successor in interest to Sunquest.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332 because the parties are citizens of different states and the amount in controversy exceeds \$75,000.00.

4. Venue in this Court is appropriate pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events and/or omissions giving rise to the claim occurred in this district and because the property that is the subject of this action is situated in this district.

BACKGROUND FACTS

5. On or about February 28, 2006, Liberty Property Limited Partnership and Sunquest Vacations, Inc. (now known as Sundance) entered into a lease agreement for Bluemound Crossings, Suite 100, 16620 West Bluemound Road, Brookfield, Wisconsin 53005 (the "Premises"), as landlord and tenant respectively (the "Lease"). A true and correct copy of the Lease is attached hereto as Exhibit A and is incorporated herein by reference.

6. On or about November 11, 2008, Liberty Property Limited Partnership assigned the Lease to Cornicione.

7. The Lease commencement date was May 1, 2006 and the Lease expiration date is October 31, 2013.

8. According to the terms of the Lease, Sundance agreed to pay rent of \$7,786.58 every month for months 67-78 of the Lease term. Sundance also agreed to pay rent of \$7,933.50 every month for months 79-90 of the Lease term.

9. In addition to the amounts listed above, Sundance also agreed to pay the landlord its share of the operating expenses for each calendar year. Sundance's share of the operating expenses for 2012 is \$4,792.32 per month. Cornicione estimates that Sundance's share of the operating expenses will also be approximately \$4,792.32 per month in 2013.

10. Paragraph 29 of the Lease granted Sundance a one-time right to terminate the Lease at the end of the forty-third (43rd) full month of the Lease term on November 30, 2009, by providing a minimum of six (6) months' advance written notice no later than May 31, 2009. This section of the Lease provides that "[t]ime is of the essence as to the exercise of the rights contained in Section 29." Sundance did not timely provide such notice to Landlord, thereby waiving any termination rights under Paragraph 29 of the Lease.

11. On or about July 29, 2011, Irgens Development Partners, LLC, an affiliate of Cornicione, received a letter from Sundance purporting to exercise its option to terminate the Lease effective January 31, 2012.

12. On or about August 2, 2011, Cornicione sent a letter to Sundance explaining that it did not have the option to terminate the Lease because Paragraph 29 of the Lease granted Sundance only a one-time right to terminate which it failed to exercise, not a continuing right to terminate.

13. On or about March 1, 2012, Sundance vacated the Premises.

14. Sundance has failed to pay rent and monthly operating expenses due under the terms of the Lease since February 2012.

15. Under the terms of the Lease, a default occurs if Sundance does not pay all rent when due and fails to cure such default on or before the date that is five (5) days after Cornicione gives Sundance notice of default.

16. On or about March 8, 2012, Cornicione sent Sundance a Notice of Default. A true and correct copy of the Notice of Default is attached hereto as Exhibit B and is incorporated herein by reference.

17. To date, Sundance has not responded to the Notice of Default and has not cured the default.

18. Under the terms of the Lease, upon default, Cornicione may accelerate the whole or any part of the rent and operating expenses for the balance of the Lease term and declare the same to be immediately due and payable.

FIRST CAUSE OF ACTION – BREACH OF CONTRACT

19. Cornicione realleges and incorporates by reference each and every one of the foregoing paragraphs as if fully set forth herein.

20. Cornicione and Sundance have an enforceable contract pursuant to the Lease.

21. Sundance breached its duties under the Lease by, among other things, failing to pay rent and failing to pay operating expenses, which default remains uncured despite notice of same to Sundance.

22. Cornicione has been damaged as a direct and proximate result of Sundance's breach of the Lease in the amount of at least \$256,683.65 for accelerated rent payments for the remainder of the Lease term and operating expenses, plus interest, costs, disbursements, and attorneys' fees as provided in the Lease.

WHEREFORE, Plaintiff Cornicione Development, LLC respectfully demands judgment against Defendant Sundance Vacations, N.A., Inc. f/k/a Sunquest Vacations, Inc. as follows, awarding:

1. The sum of \$256,683.65 for the rent and operating expenses due to Plaintiff for the remainder of the Lease term;
2. Interest, costs, expenses, and attorneys' fees as provided in the Lease; and
3. All such other relief as the Court deems just and equitable.

Dated this 3rd day of April, 2012.

GODFREY & KAHN, S.C.

By: *s/ Mark E. Schmidt*

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